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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Carrier Branch**

**RESOLUTION T-16920
April 21, 2005**

R E S O L U T I O N

Resolution T-16920. Citizens Telecommunications Company of California Inc. (U-1024-C). Request for Text Changes and Update Special Conditions Associated with the Promotional Campaigns Tariff Under Which its Promotional Campaigns Tariff Becomes a Permanent Tariff Offering.

By Advice Letter No. 896, filed on December 28, 2004.

Summary

This resolution authorizes Citizens Telecommunications Company of California Inc.'s (CTC-CA's) request in Advice Letter (AL) No. 896 for text changes and update Special Conditions associated with the Promotional Campaigns tariff under which its Promotional Campaigns tariff becomes a permanent tariff offering.

Background

By AL No. 896, filed on December 28, 2004, CTC-CA requests authority to change text and update Special Conditions associated with the Promotional Campaigns tariff under which its Promotional Campaigns tariff becomes a permanent tariff offering.

CTC-CA proposes the following changes in its tariff Schedule Cal P.U.C. No. A5.5:

5.5.4 DESCRIPTION

“The Utility may waive and/or discount specific tariff rates and/or charges, provide customers with credits based on meeting certain conditions, or offer other incentives to purchase tariffed services as approved by the California Public Utilities Commission (CPUC).”

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5.5.5 SPECIAL CONDITIONS

“3. The Utility may promote selected new and existing services on a statewide basis or may limit the promotional offering to serving central offices designated by the Utility.”

“11. Customers may cancel at any time during or at the conclusion of the promotional period without penalty. Recoveries, such as those of credits and waived charges, will not be considered to be penalties. Unless otherwise stated in the promotion: (1) if the customer does not meet the required terms and conditions of the promotion or disconnects any required service prior to completion of any agreed upon term, no further credits or waivers will be given to the customer, and, (2) the Utility will bill the customer, and the customer will be required to pay, all previous credits and waived charges received pursuant to the promotion. The customer will also be required to pay any charges, payments, disconnection/termination or penalty fees required by the tariffs or any other incorporated promotional offering. Minimum charges for service as set forth in Schedule Cal P.U.C. D&R Rule No. 10 are applicable to promotional offerings.”

In 1989, the Commission began the process to open the local telephone market to competition and ordered the then-monopoly service providers (“incumbents”) to sell wholesale services to their new competitors. To ensure that the incumbents did not under price their services to retail customers, the Commission adopted a complex set of rules (“imputation rules”) that required incumbents’ prices be equal to or greater than the wholesale prices charges to the competitors.

The imputation requirement’s primary purpose is to safeguard against two types of potential anticompetitive abuses by the incumbent local exchange carriers. (1) by requiring that the tariff price at least recover the incumbent local exchange carrier’s costs, such that monopoly customers are not subsidizing competitive offerings, and (2) by promoting fair competition by preventing the incumbent local exchange carrier from under pricing its competitive offerings to the detriment of competitors.

When the Commission adopted the imputation rules in 1989, incumbents did not, and could not bundle different service elements. Now, however, such bundling is common practice.

In D.04-11-022, the Commission adopted “Total of the floors” approach for NRF-regulated incumbent local exchange carriers. D.04-11-022 applies to both promotional offerings and permanent offerings as long as the imputation rules outlined in D.94-09-065 are followed. Additionally, D.04-11-022 allows incumbents to include multiple

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services in an offering that provides for waiving any nonrecurring charge so long as the revenue from all the services over the expected location life is equal to or exceeds the total of the recurring and nonrecurring price floors for each service. Attachment A in D.04-11-022 sets out the general rule for “Total of the floors” approach:

$$\Sigma \text{ Floors} \leq \Sigma \text{ Revenue}$$

To meet the requirements of the “Total of the floors” test, the incumbent must demonstrate, with well-supported cost studies, that all nonrecurring charges and recurring rates will recover all costs over the location life of the service offering.

D.04-11-022 only applies to NRF-regulated incumbent local exchange carriers with: (a) approved wholesale rates for basic exchange service or, (b) wholesale rates for basic exchange service filed with the Commission pending approval.

CTC-CA does not have wholesale rates tariff schedule, hence, D.04-11-022 will only apply to CTC-CA when CTC-CA has a wholesale rates tariff for basic exchange service and other services on file with the Commission or when and if CTC-CA has wholesale rates for basic exchange service filed in an application which is pending Commission approval.

The “Telecommunications Act of 1996” indicates that telecommunications services offered at special promotional rates that last for more than 90 days will be subject to resale at a wholesale discount. Again, CTC-CA does not have wholesale rates tariff schedule, hence, the “Telecommunications Act of 1996” will apply to CTC-CA when CTC-CA has wholesale rates tariff for basic exchange service and other services on file with the Commission.

Currently, CTC-CA has an interim tariff Schedule Cal P.U.C. No. A5.5, Promotional Campaigns, on file with the Commission. TD recently discovered that CTC-CA does not have permanent authority from the Commission to offer promotions. Therefore, TD directed CTC-CA to obtain Commission authority for such offerings. When a permanent promotional tariff is authorized, the promotional offerings which meet the terms and conditions of this authorization may be filed by advice letters which would go into effect in no less than five days without a Commission resolution. These advice letters are subject to a 20-day protest period.

Notice/Protests

CTC-CA states that copies of the Advice Letter had been mailed to adjacent utilities and/or other utilities. Notice of Advice Letter No. 896 was published in the Commission Daily Calendar of January 3, 2005.

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No protest to Advice Letter No. 896 has been filed.

Discussion

A. The Terms of Commission Authorization

CTC-CA, in AL No. 896, requests authority to change text and update Special Conditions associated with the Promotional Campaigns tariff that its Promotional Campaigns tariff becomes a permanent tariff offering. The authority for permanent promotional offerings has been granted to Evans Telephone Company in Resolution T-16081 (September 3, 1997), and to Sierra Telephone Company in Resolution T-16091 (December 3, 1997). When a permanent promotional tariff is authorized, the promotional offerings which meet the terms and conditions of that authorization may be filed by advice letters which would go into effect in no less than five days without a Commission resolution. These advice letters are subject to a 20-day protest period.

CTC-CA should notify the Commission by a five-day memorandum notice of all repeat or extended promotions. The authorization for repeat or extended promotions will be limited to 120 days. No promotion, whether repeated or extended, will last for more than 240 days: 120 days maximum duration approved through an advice letter filing and an additional 120 days maximum extension of time to either repeat or extend promotions approved via the five-day notice. If communication services are offered at promotional rates that last for more than 90 days, CTC-CA is required to offer the promoted service(s) for resale at a wholesale discount.

Promotions for the same service will not be authorized by the Commission for a period of 60 days after a promotion has run for 240 consecutive days.

CTC-CA may advertise and market promotional pricing campaigns prior to the 5 day effective date of the promotion provided that all the media where the promotion is discussed contain the disclaimer that "this promotion will be effective on [specific date] pending Commission notification."

If after the review period the Commission found that a promotion was counter to its regulatory policies, then CTC-CA should be ordered to cease and desist immediately.

Additionally, if CTC-CA's violations were egregious in nature, CTC-CA could be ordered to impute in its the revenues lost during the promotion. If further penalties are deemed necessary, the Commission could impose on CTC-CA penalties similar to those described on page 235 of the mimeo copy of the IRD decision, D.94-09-065, modified as followings:

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- 1) the Commission could impose a penalty of \$10,000 or twice the difference between the revenue collected at the applicable tariffed and promotional rates over the life of the promotion, whichever is greater, and \$2,000 for each occurrence, payable to the state general fund, and
- 2) if the Commission found a pattern of egregious violations of the promotional pricing authority granted here, then such authority may be suspended.

B. Definition of Legitimate Services/Offerings

In order to satisfy P.U. Code Section 453-C, promotional offerings should be made available to all customers using equivalent services and facilities, regardless of class or locale. Therefore, promotional offerings (reduced or waived non-recurring charges) are appropriate when offered to all customers or when a service is newly available, either throughout the utility's intrastate service territory or due to the upgrade of the utility's serving facilities. Public Utilities (P.U.) Code Section 453-C prohibits public utilities from "establish(ing) or maintain(ing) any unreasonable difference as to rates, charges, services, facilities, or in any other respect, either as between localities or as between classes of service."

Additionally, in considering whether a "service" is appropriate for promotion, we should consider the definition of "new service" which this Commission adopted in Decision (D.) 87-07-017, D.88-12-091, and D.90-11-029. Therein, we have agreed with AT&T's definition of new service as "an offering which customers perceive as a new service and which has a combination of technology, access, features or functions that distinguishes it from any existing services" (D.88-12-091 at P. 53). The Commission adopted this definition with the qualifier that "repricing or repackaging of an existing service would not be considered a new service" and observed that "the definition does not classify an optional calling plan which discounts existing service as a new service" (Id. at pp. 53-54).

C. Conclusion

Authorizing CTC-CA a permanent promotional tariff for new and existing services will allow its customers the benefit of making an informed decision based on personal use of the service during the promotional period.

Currently, CTC-CA has an interim tariff Schedule Cal P.U.C. No. A5.5, Promotional Campaigns, on file with the Commission. To reiterate the conditions CTC-CA should follow:

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For each promotion-specific advice letter, CTC-CA shall include the following information in order to avoid discriminatory treatment and to mitigate any negative impacts on its subscribers or its general ratepayers:

1. The overall criteria for waiving or discounting the non-recurring charge during the promotional program and the financial impacts on the entire service to reflect the revenue required to recover the cost of the promotion.
2. The start and the end dates of the promotion(s).
3. The program for customer notification/participation.
4. Samples of the notification materials.
5. Any limitations or safeguards (e.g., customer selection, rate structure, and program monitoring).
6. The tracking (post-implementation analysis) plan.

CTC-CA should submit a report to the Telecommunications Division (TD) within 60-days of the expiration of the promotion. The report should separately identify the following details:

1. The non-recurring revenue loss from the promotion;
2. the non-recurring costs of the promotion;
3. the recurring revenue gain;
4. the recurring expenses;
5. the number of subscribing customers;
6. the record of any complains;
7. the record of how long customers retain the service during the promotional period.

Telecommunications Division (TD) has reviewed CTC-CA's AL No. 896. TD concludes that CTC-CA's request for authority to change text and update Special Conditions associated with the Promotional Campaigns tariff under which its Promotional Campaigns tariff becomes a permanent tariff offering is reasonable.

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TD recommends that the Commission approve this filing.

Commission approval is based on the specifics of the Advice Letter and does not establish a precedent for the contents of future filings or for Commission approval of similar requests.

Comments

In compliance with PU Code § 311 (g), a notice letter was e-mailed or mailed on March 21, 2005 to the interested parties, and informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov> and is available for public comments. In addition, TD informed these parties of the availability of the conformed resolution at the same website.

Findings

1. By AL No. 896, filed on December 28, 2004, CTC-CA requests authority to change text and update Special Conditions associated with the Promotional Campaigns tariff under which its Promotional Campaigns tariff becomes a permanent tariff offering.
2. CTC-CA proposed changes to text and to update Special Conditions in tariff Schedule Cal C.P.U.C. No. A5.5 in order to clarify the existing tariff language with more detail.
3. CTC-CA's request for permanent status to offer promotional pricing programs in AL No. 896 is generic and designed to provide the foundation for future promotional offerings of services which result from new utility servicing facility technology or territory-wide offerings of new or existing optional services.
4. In D.04-11-022, the Commission adopted "Total of the floors" approach for NRF-regulated incumbent local exchange carriers. D.04-11-022 applies to both promotional offerings and permanent offerings as long as the

imputation rules outlined in D.94-04-065 are followed. Attachment A in D.04-11-022 sets out the general rule for the "Total of the floors" approach:

$$\Sigma \text{Floors} \leq \Sigma \text{Revenue}$$

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5. The “Telecommunications Act of 1996” requires that telecommunications services offered at special promotional rates that last for more than 90 days be subject to resale at a wholesale discount.
6. CTC-CA does not have wholesale tariff schedule, D.04-11-022 and the “Telecommunications Act of 1996” will apply to CTC-CA when CTC-CA has wholesale tariff for basic exchange service and other services on file with the Commission or when and if CTC-CA has wholesale rates for basic exchange service and other services filed in an application which is pending Commission approval.
7. Once the Commission authorizes and adopts a promotional program by resolution (i.e., via Advice Letter 896), no further Commission resolutions should be required for promotional offerings which meet the terms and conditions of that authorization. Such subsequent filings can be made as advice letters which will go into effect on regular notice without a Commission resolution. These advice letters are subject to a 20-day protest period.
8. In order to satisfy P.U. Code Section 453-C, promotional offerings should be made available to all customers using equivalent services and facilities (i.e., the same or similarly equipped central offices), regardless of class or locale.
9. Promotional offerings (reduced or waived non-recurring charges) are appropriate when offered to all customers or when a service is newly available (but has passed the market trial and technology test stages) either throughout the utility’s intrastate service territory or due to the upgrade of the utility’s serving facilities.
10. In considering whether a “service” is appropriate for promotion, the definition used and adopted in D.87-07-017, D.88-12-091, and D.90-11-029 is to be used by CTC-CA. this
11. We adopted definition with the qualifier that “repricing or repackaging of an existing service would not be considered a “new service” and observed that “the definition does not classify an optional calling plan which discounts existing service as a “new service” (Id. at pp. 53-54).
12. Authorizing the promotional pricing of optional services will afford CTC-CA’s customers the benefit of “trialing” the service and then to make an informed decision whether to continue the service on a permanent basis.
13. Each promotion-specific advice letter should include the following information:
 - a) The overall criteria for waiving or discounting or the non-recurring charge during the promotional program and the financial impacts on the

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entire service to reflect the revenue required to recover the cost of the promotion.

- b) The start and the end dates of the promotion(s).
 - c) The program for customer notification/participation.
 - d) Samples of the notification materials.
 - e) Any limitations or safeguards (e.g., customer selection, rate structure, and program monitoring).
 - f) The tracking (post-implementation analysis) plan.
14. Advice letters which comply with the conditions enumerated in the Findings in this resolution should become effective on regular notice, which is no less than five days.
15. The financial impact report required on each promotional offering should include the following details:
- a) The non-recurring revenue loss from the promotion;
 - b) the non-recurring costs of the promotion;
 - c) the recurring revenue gain;
 - d) the recurring expenses;
 - e) the number of subscribing customers;
 - f) the record of any complains; and
 - g) the record of how long customers retain the service during the promotional period.
16. After reviewing CTC-CA's AL No. 896, TD recommends that the commission approve this filing.

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THEREFORE, IT IS ORDERED that:

1. CTC-CA is authorized to change text and update Special Conditions associated with the Promotional Campaigns tariff under which its Promotional Campaigns tariff becomes a permanent tariff offering.
2. CTC-CA is authorized to promote only specific services which result from upgraded serving facilities, or territory-wide offerings of new (but beyond the market trial and technology test stages) or existing services.
3. CTC-CA is authorized to advertise and market promotional pricing campaigns prior to the 5 day effective date of the promotion provided that all the media where the promotion is discussed contain the disclaimer that "this promotion will be effective on [specific date] pending Commission notification."
4. CTC-CA shall file advice letters for inclusion of specific services in tariff Schedule Cal P.U.C. No. A5.5 to become eligible for promotional pricing. Such advice letters shall include the elements specified in Finding No. 12.
5. When CTC-CA has a wholesale rates tariff for basis exchange service and other services on file with the Commission, CTC-CA will be allowed to implement the "Total of the Floors" approach for promotions as described in D.04-11-022 and as long as it follows imputation guidelines established in D.94-09-065.
6. If the telecommunications services offered at special promotional rates that last for more than 90 days, CTC-CA shall have a resale tariff in place so that it will be able to offer the promoted service(s) at a wholesale discount.
7. Within 30 days from the effective date of this resolution, CTC-CA shall file a revised Promotional Campaign tariff with TD for its review and approval.
8. Financial Impact Report(s) shall be filed by CTC-CA within 60 days of the ending date of each promotional offering and shall include the details specified in Finding No. 15. The report on the last promotional offering shall be approved by the Telecommunications Division before the next promotional offering is made.
9. If the Commission determines that CTC-CA's promotion caused undue harm and anticompetitive results, then the company will be ordered to impute the revenue lost during the promotion in the sharing calculation. The Commission can also impose a penalty of \$10,000 or twice the difference between the revenues collected at the applicable tariffed and promotional rates over the life of the promotion, whichever is greater, and \$2,000 for each occurrence, which would be payable to the state general fund.

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10. If the Commission finds a pattern of egregious violations of the promotional pricing authority granted here, CTC-CA's authority may be suspended.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 21, 2005. The following Commissioners approved it.

STEVE LARSON
Executive Director